

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert L. Bratzler et al.
Serial No.: 09/776,479
Confirmation No.: 7139
Filed: February 2, 2001
For: IMMUNOSTIMULATORY NUCLEIC ACIDS FOR THE TREATMENT
OF ASTHMA AND ALLERGY
Examiner: N. M. Minnifield
Art Unit: 1645

Certificate of Electronic Filing Under 37 CFR 1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: June 8, 2009

Signature: /Nicole Millette Lapomardo/ (Nicole Millette Lapomardo)

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705

In accordance with 37 CFR §1.705(b), Applicant requests reconsideration of the patent term adjustment (“PTA”) for U.S. Application No. 09/776479 (“the ‘479 Application”). Applicant provides, below, a statement of the facts involved, specifying the correct PTA and the bases under 37 CFR §1.702 for the adjustment, the relevant dates for which adjustment is sought, and the adjustment to which the patent is entitled.

1. On March 6 2009, the U.S. Patent and Trademark Office (“USPTO”) mailed a Notice of Allowance and Determination of Patent Term Adjustment (Exhibit 1) for the ‘479 Application, which indicated that the ‘479 Application was entitled to a PTA of 0 days.

2. According to the Patent Term Adjustments page (Exhibit 2) of the Patent Application Information Retrieval (PAIR) system, the USPTO accorded the ‘479 Application a PTA of 330 days for delays that occurred at the USPTO, but reduced the PTA to 0 days because Applicant had allegedly incurred 596 days of delay.

3. Applicant submits that the correct PTA should be 647 days, which is the net USPTO delay of 1330 days minus the apparent net Applicant delay of 683 days.

4. The difference between what Applicant submits is the correct PTA (647 days) and what the Notice of Allowance and Determination of Patent Term Adjustment states is the PTA (0 days) results, in part, from the USPTO's failure to issue the '479 Application within three years of its actual filing date, i.e. by February 2 2004. *See* 35 U.S.C. § 154(b)(1)(B). Applicant filed a Request for Continued Examination (RCE) on October 30 2006 which resulted in an exclusion of time from that date forward. *See* 35 U.S.C. § 154(b)(B)(i). The period of delay thus began on the first day following the three year period, February 3 2004, and ended on October 30 2006, and resulted in a USPTO delay of 1000 days. The USPTO has not included this delay in its calculation of the PTA shown in the PAIR system.

5. The difference also results, in part, from the submission of a series of Information Disclosure Statements on November 24 2008, November 28 2008 and February 23 2009. If considered to be supplemental replies, these submissions may result in Applicant delay of 94 days (period from November 21 2008 to February 23 2009). *See* 37 CFR § 1.704(c)(8). Only 7 days of delay (for the period from November 21 2008 to November 28 2008) were included on the PTA page of PAIR.

6. A terminal disclaimer was not filed in the '479 Application and the '479 Application is not subject to a terminal disclaimer.

Conclusion

Based on the foregoing, Applicant respectfully requests that the correct PTA should be at least 647 days and not 0 days as listed in the Notice of Allowance and Determination of Patent Term Adjustment.

Applicant submits \$200.00, which is the fee set forth in 37 CFR § 1.18(e) for filing an application for PTA. If there is any additional fee occasioned by this application and request that is not covered by the enclosed fee, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,



Maria A. Trevisan
Registration No. 48,207
WOLF, GREENFIELD & SACKS, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210-2206
617.646.8000

Date: June 8, 2009
x06.08.09

EXHIBIT 1



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,479	02/02/2001	Robert L. Bratzler	C1037/7013 (HCL/MAT)	7139

7590 03/06/2009

Helen C. Lockhart
c/o Wolf Greenfield & Sacks, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210

EXAMINER

MINNIFIELD, NITA M

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 03/06/2009

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

EXHIBIT 2

09/776,479	IMMUNOSTIMULATORY NUCLEIC ACIDS FOR THE TREATMENT OF ASTHMA AND ALLERGY	06-08- 2009::09:47:31
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/776,479

Filing or 371(c) Date:	02-02-2001	USPTO Delay (PTO) Delay (days):	330
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	596
Post-Issue Petitions (days):	+0	Total PTA (days):	0
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
03-06-2009	Mail Notice of Allowance		
02-23-2009	Information Disclosure Statement (IDS) Filed		
02-17-2009	Document Verification		
08-15-2008	Examiner Interview Summary Record (PTOL - 413)		
02-17-2009	Notice of Allowance Data Verification Completed		
11-28-2008	Information Disclosure Statement considered		
11-24-2008	Information Disclosure Statement considered		
11-28-2008	Reference capture on IDS		
11-28-2008	Information Disclosure Statement (IDS) Filed		7
11-24-2008	Reference capture on IDS		↑
11-24-2008	Information Disclosure Statement (IDS) Filed		↑
12-04-2008	Date Forwarded to Examiner		↑
11-21-2008	Response after Non-Final Action		↑
11-28-2008	Information Disclosure Statement (IDS) Filed		
11-24-2008	Information Disclosure Statement (IDS) Filed		
09-15-2008	Miscellaneous Incoming Letter		
08-21-2008	Mail Non-Final Rejection		
08-18-2008	Non-Final Rejection		
11-05-2007	Information Disclosure Statement considered		
06-03-2008	Date Forwarded to Examiner		
04-24-2008	Response after Non-Final Action		96
04-24-2008	Request for Extension of Time - Granted		↑
11-05-2007	Reference capture on IDS		↑
11-05-2007	Information Disclosure Statement (IDS) Filed		↑
11-05-2007	Information Disclosure Statement (IDS) Filed		↑
10-19-2007	Mail Non-Final Rejection		↑
10-15-2007	Non-Final Rejection		
07-30-2007	Date Forwarded to Examiner		
07-23-2007	Response after Non-Final Action		95
07-23-2007	Request for Extension of Time - Granted		↑
01-19-2007	Mail Non-Final Rejection		↑

01-08-2007	Non-Final Rejection	
11-06-2006	Date Forwarded to Examiner	
11-06-2006	Date Forwarded to Examiner	
10-30-2006	Request for Continued Examination (RCE)	95
11-06-2006	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	↑
10-30-2006	Request for Extension of Time - Granted	↑
10-30-2006	Workflow - Request for RCE - Begin	↑
04-27-2006	Mail Final Rejection (PTOL - 326)	↑
04-26-2006	Final Rejection	
01-30-2006	Date Forwarded to Examiner	
01-09-2006	Response after Non-Final Action	95
01-09-2006	Request for Extension of Time - Granted	↑
07-06-2005	Mail Non-Final Rejection	↑
06-27-2005	Non-Final Rejection	
04-15-2005	Date Forwarded to Examiner	
04-06-2005	Response after Non-Final Action	61
04-06-2005	Request for Extension of Time - Granted	↑
11-04-2004	Mail Non-Final Rejection	↑
11-01-2004	Non-Final Rejection	
08-25-2004	Date Forwarded to Examiner	
08-18-2004	Response to Election / Restriction Filed	
08-18-2004	Workflow incoming amendment IFW	
07-14-2004	Mail Restriction Requirement	
07-12-2004	Requirement for Restriction / Election	
04-09-2004	Date Forwarded to Examiner	
03-29-2004	Response after Non-Final Action	95
03-29-2004	Request for Extension of Time - Granted	↑
02-17-2004	IFW Amended case processing Complete	↑
01-27-2004	Miscellaneous Incoming Letter	↑
12-29-2003	Mail-Petition Decision - Granted	↑
07-11-2003	Petition Entered	↑
07-17-2003	Reference capture on IDS	↑
07-17-2003	Information Disclosure Statement (IDS) Filed	17
07-17-2003	Information Disclosure Statement (IDS) Filed	
09-25-2003	Mail Non-Final Rejection	↑
09-22-2003	Non-Final Rejection	↑
07-15-2003	Case Docketed to Examiner in GAU	↑
07-07-2003	Date Forwarded to Examiner	↑
06-30-2003	Response to Election / Restriction Filed	35
06-30-2003	Request for Extension of Time - Granted	↑
02-26-2003	Mail Restriction Requirement	330

02-24-2003	Requirement for Restriction / Election	⬆
02-24-2003	Application Return from OIPE	⬆
08-21-2002	Application Is Now Complete	⬆
07-29-2002	CRF Disk Has Been Received by Preexam / Group / PCT	⬆
07-29-2002	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	⬆
08-12-2002	CRF Is Good Technically / Entered into Database	⬆
06-18-2002	Notice Mailed--Application Incomplete--Filing Date Assigned	⬆
06-18-2002	Pre-Exam Office Action Withdrawn	⬆
05-15-2002	Application Return TO OIPE	⬆
03-20-2002	X-Pre-Legal Complete Amended Case	⬆
01-14-2002	Information Disclosure Statement (IDS) Filed	⬆
01-14-2002	Information Disclosure Statement (IDS) Filed	⬆
01-08-2002	Preliminary Amendment	⬆
02-28-2002	X-Pre-Legal Complete New Case	⬆
02-28-2002	Case Docketed to Examiner in GAU	⬆
01-31-2002	Application Dispatched from OIPE	⬆
01-29-2002	Application Is Now Complete	⬆
10-11-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	⬆
10-10-2001	Correspondence Address Change	⬆
10-09-2001	Case Found	⬆
10-09-2001	Termination of Official Search	⬆
10-03-2001	Official Search Conducted	⬆
10-03-2001	Case Reported Lost	⬆
02-23-2001	IFW Scan & PACR Auto Security Review	⬆
02-02-2001	CRF Disk Has Been Received by Preexam / Group / PCT	⬆
02-02-2001	Initial Exam Team nn	⬆

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